

(2) The Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.)

(3) Any international agreement to which the United States is a party.

(Pub. L. 104-201, div. A, title VIII, §827, Sept. 23, 1996, 110 Stat. 2611; Pub. L. 105-85, div. A, title VIII, §846, Nov. 18, 1997, 111 Stat. 1845; Pub. L. 105-261, div. A, title VIII, §812, Oct. 17, 1998, 112 Stat. 2086.)

#### REFERENCES IN TEXT

The Buy American Act, referred to in text, is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which enacted sections 10a, 10b, and 10c of this title, and enacted provisions set out as notes under section 10c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10a of this title and Tables.

Section 849(c)(2) of Pub. L. 103-160, referred to in par. (1), which was formerly set out as a note under section 10b-2 of this title, was transferred and is classified to section 10b-2(a)(2) of this title.

The Trade Agreements Act of 1979, referred to in par. (2), is Pub. L. 96-39, July 26, 1979, 93 Stat. 144. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19, Customs Duties, and Tables.

#### AMENDMENTS

1998—Pub. L. 105-261 substituted “60 days” for “90 days” in introductory provisions.

1997—Pub. L. 105-85 substituted “90 days” for “120 days” in introductory provisions.

#### SIMILAR PROVISIONS

Provisions similar to those in this section were contained in the acts listed in the Similar Provisions note set out under section 10b-2 of this title.

### § 10c. Definition of terms used in sections 10a, 10b, and 10c

When used in sections 10a, 10b, and 10c of this title—

(a) The term “United States”, when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms “public use”, “public building”, and “public work” shall mean use by, public building of, and public work of, the United States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands.

(Mar. 3, 1933, ch. 212, title III, §1, 47 Stat. 1520; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Pub. L. 86-70, §43, June 25, 1959, 73 Stat. 151; Pub. L. 86-624, §28, July 12, 1960, 74 Stat. 419; Pub. L. 100-418, title VII, §7005(a), Aug. 23, 1988, 102 Stat. 1552.)

#### REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (b), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

#### CODIFICATION

Words “the Philippine Islands” in subsec. (b) of this section were deleted as obsolete in view of recognition of independence of the Philippines by Proc. No. 2695, which was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under section 1394.

#### AMENDMENTS

1988—Subsec. (c). Pub. L. 100-418, §§7004, 7005(a), temporarily added subsec. (c) which read as follows: “The

term ‘Federal agency’ has the meaning given such term by section 472 of title 40, which includes the Departments of the Army, Navy, and Air Force.” See Termination Date of 1988 Amendment note below.

1960—Subsec. (b). Pub. L. 86-624 struck out Hawaii.

1959—Subsec. (b). Pub. L. 86-70 struck out Alaska.

#### TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by former section 2515(k) of Title 19, Customs Duties, extends such date, see section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

#### EFFECTIVE DATE

Section 4 of title III of act Mar. 3, 1933, as temporarily renumbered §5 by Pub. L. 100-418, title VII, §7002(1), Aug. 23, 1988, 102 Stat. 1545, provided: “This title [enacting this section and sections 10a and 10b of this title] shall take effect on the date of its enactment [Mar. 3, 1933], but shall not apply to any contract entered into prior to such effective date.”

#### SEPARABILITY

Section 5 of title III of act Mar. 3, 1933, as temporarily renumbered §6 by Pub. L. 100-418, title VII, §7002(1), Aug. 23, 1988, 102 Stat. 1545, provided: “If any provision of this Act [see Tables for classification], or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application thereof to other persons or circumstances, shall not be affected thereby.”

### § 10d. Clarification of Congressional intent regarding sections 10a and 10b(a)

In order to clarify the original intent of Congress, hereafter, section 10a of this title and that part of section 10b(a) of this title preceding the words “*Provided, however,*” shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the department or independent establishment concerned shall determine their purchase to be inconsistent with the public interest or their cost to be unreasonable.

(Oct. 29, 1949, ch. 787, title VI, §633, 63 Stat. 1024; Pub. L. 100-418, title VII, §7005(d), Aug. 23, 1988, 102 Stat. 1553.)

#### AMENDMENTS

1988—Pub. L. 100-418, §§7004, 7005(d), temporarily substituted “Federal agency” for “department or independent establishment”. See Termination Date of 1988 Amendment note below.

#### TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by former section 2515(k) of Title 19, Customs Duties, extends such date, see section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

#### EX. ORD. NO. 10582. UNIFORM PROCEDURES FOR DETERMINATIONS

Ex. Ord. No. 10582, Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

SECTION 1. As used in this order, (a) the term “materials” includes articles and supplies, (b) the term “ex-

ecutive agency" includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term "bid or offered price of materials of foreign origin" means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

SEC. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

(b) For the purposes of the said act of March 3, 1933 [see Tables for classification], and the other laws referred to in the first paragraph of the preamble of this order, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in subsection (c) of this section.

(c) The executive agency concerned shall in each instance determine the amount of the differential referred to in subsection (b) of this section on the basis of one of the following-described formulas, subject to the terms thereof:

(1) The sum determined by computing six per centum of the bid or offered price of materials of foreign origin.

(2) The sum determined by computing ten per centum of the bid or offered price of materials of foreign origin exclusive of applicable duty and all costs incurred after arrival in the United States; provided that when the bid or offered price of materials of foreign origin amounts to less than \$25,000, the sum shall be determined by computing ten per centum of such price exclusive only of applicable duty.

SEC. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

(a) To reject any bid or offer for reasons of the national interest not described or referred to in this order; or

(b) To place a fair proportion of the total purchases with small business concerns in accordance with section 302(b) of the Federal Property and Administrative Services Act of 1949, as amended [41 U.S.C. 252(b)], section 2(b) of the Armed Services Procurement Act of 1947, as amended [41 U.S.C. 151(b)], and section 202 of the Small Business Act of 1953 [15 U.S.C. 631]; or

(c) To reject a bid or offer to furnish material of foreign origin in any situation in which the domestic supplier offering the lowest price for furnishing the desired materials undertakes to produce substantially all of such materials in areas of substantial unemployment, as determined by the Secretary of Labor in accordance with such appropriate regulations as he may establish and during such period as the President may determine that it is in the national interest to provide to such areas preference in the award of Government contracts: *Provided*, that nothing in this section shall prevent the rejection of a bid or offered price which is excessive; or

(d) To reject any bid or offer for materials of foreign origin if such rejection is necessary to protect essential national-security interests after receiving advice with respect thereto from the President or from the Director of the Federal Emergency Management Agency. In providing this advice the Director shall be governed by the principle that exceptions under this section shall be made only upon a clear showing that the payment of a greater differential than the procedures of this section generally prescribe is justified by consideration of national security.

SEC. 4. The head of each executive agency shall issue such regulations as may be necessary to insure that procurement practices under his jurisdiction conform to the provisions of this order.

SEC. 5. This order shall apply only to contracts entered into after the date hereof. In any case in which the head of an executive agency proposing to purchase

domestic materials determines that a greater differential than that provided in this order between the cost of such materials of domestic origin and materials of foreign origin is not unreasonable or that the purchase of materials of domestic origin is not inconsistent with the public interest, this order shall not apply. A written report of the facts of each case in which such a determination is made shall be submitted to the President through the Director of the Office of Management and Budget by the official making the determination within 30 days thereafter.

#### **§ 11. No contracts or purchases unless authorized or under adequate appropriation; report to the Congress**

(a) No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the Department of Defense and in the Department of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year.

(b) The Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy shall immediately advise the Congress of the exercise of the authority granted in subsection (a) of this section, and shall report quarterly on the estimated obligations incurred pursuant to the authority granted in subsection (a) of this section.

(R.S. § 3732; June 12, 1906, ch. 3078, 34 Stat. 255; Pub. L. 89-687, title VI, § 612(e), Oct. 15, 1966, 80 Stat. 993; Pub. L. 98-557, § 17(e), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 104-106, div. D, title XLIII, § 4322(b)(4), Feb. 10, 1996, 110 Stat. 677.)

#### **CODIFICATION**

R.S. § 3732 derived from act Mar. 2, 1861, ch. 84, § 10, 12 Stat. 220.

#### **AMENDMENTS**

1996—Subsec. (a). Pub. L. 104-106 struck out second comma after "quarters".

1984—Subsec. (a). Pub. L. 98-557, § 17(e)(1)(A), substituted "except in the Department of Defense and in the Department of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy" for "except in the War and Navy Departments".

Pub. L. 98-557, § 17(e)(1)(B), substituted "transportation, or medical and hospital supplies" for "or transportation", such change having been made by Act June 12, 1906, thereby requiring no further change in text. See Repeals note below.

Subsec. (b). Pub. L. 98-557, § 17(e)(2), inserted provisions relating to the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

1966—Pub. L. 89-687 designated existing provisions as subsec. (a) and added subsec. (b).

1906—Act June 12, 1906, inserted "medical and hospital supplies".

#### **EFFECTIVE DATE OF 1996 AMENDMENT**

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

#### **REPEALS**

The first proviso under the heading "MEDICAL DEPARTMENT" in act June 12, 1906, ch. 3078, 34 Stat. 255,